



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536

FILE:

Office: Montreal

Date:

FEB 04 2000

IN RE: Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under §§
212(h) and (i) of the Immigration and Nationality Act, 8 U.S.C.
1182(h) and (i)

IN BEHALF OF APPLICANT:

Self-represented

Public Copy

Identifying as
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

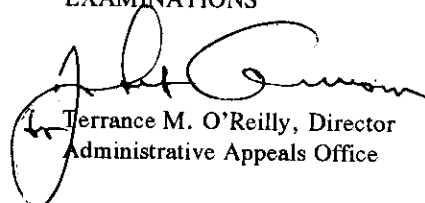
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Port Director, Montreal, Canada, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is before the Associate Commissioner on a motion to reopen. The motion will be rejected at this time and the matter will be remanded to the port director for further action.

The applicant is a native and citizen of Canada who was found to be inadmissible to the United States by a consular officer under § 212(a)(2)(A)(i)(I) and (II) and § 212(a)(6)(C)(i) of the Immigration and Nationality Act, (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I) and (II) and 8 U.S.C. 1182(a)(6)(C)(i), for having been convicted of multiple crimes, for having been convicted of violating a law relating to a controlled substance and for having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen and is the beneficiary of an approved immediate relative visa petition. The applicant seeks the above waiver in order to reside with his spouse in the United States.

The port director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. The Associate Commissioner affirmed that decision and dismissed the appeal for failure of the applicant to provide credible evidence that his conviction for possession of a controlled substance related to 30 grams or less of marijuana.

On motion, the applicant provided information from the Office of the Chief of Police in [REDACTED] that the conviction was for possession of marijuana and weighed .8 grams. The applicant states that he trusts that this evidence is satisfactory and states that his wife and son desperately need him on a permanent basis.

The record contains an Application for Permission to Reapply for Admission (Form I-212) which was denied by the district director in Detroit. Only the cover sheet of that decision is present in the record. The Form I-601 application indicates that the applicant committed some type of fraud but the record is devoid of evidence to support that conclusion. The record is also devoid of the consular officer's record of interview and finding. The port director's Form I-601 decision in the record is incomplete as the second page ends in an incomplete sentence requiring the Associate Commissioner to speculate at the remainder of that decision.

Service instructions at O.I. 103.3(c) provide, in part, that the record of proceeding must contain all evidence used in making the decision; including the following items arranged from top to bottom in the following order:

- (1) Notice of Entry of Appearance as Attorney or Representative (Form G-28).
- (2) Brief, statement, and/or supporting evidence.

(3) Notice of Appeal to the Administrative Appeals Office
(Form I-290B).

(4) Decision(s).

(7) Investigative reports and/or other derogatory
information.

(8) Application(s) or petition (Form I-601).

(10) Evidence in support of application or petition.

As constituted, the record fails to contain sufficient evidence in support of the application which could be used in the adjudication process. Therefore, the motion to reopen will be rejected at this time and the record will be remanded to the port director for it to be prepared according to O.I 103.3(c) and returned to the Associate Commissioner so that the motion can be properly adjudicated.

ORDER: The motion is rejected at this time. The matter is remanded to the port director for further action consistent with the foregoing discussion and the return of the record at which time the motion will be addressed.